IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8532 OF 2005

Namdev Hanumant Savant, .. Petitioner.
Vs
Krishna Baburao Dalvi and Ors. .. Respondents.

Mr M. Limaye a/w Mr R.S.Apte, for the petitioner.
Mr Dushant Pundekar i/b Mr Ravjiv Patil, for the respondents.

CORAM : D.B.BHOSALE,J.
DATE : 09.10.2006
PC:

1. Heard the learned counsel for the parties. Rule. Returnable forthwith. The learned counsel waives service for the respondent. By cosnent, rule is heard finally.

2. The petitioner-defendant has impugned the order dated 14.9.2005, by which his application bearing Civil Misc Application No.93/05 seeking condonation of delay in filing the appeal against the judgment and decree dated 20.04.05 passed in Regular Civil Suit no.25 of 1996, has been dismissed. The suit was filed by the respondents for perpetual injunction. It was decreed on 20.4.2005 and the petitioner was perpetually restrained from causing any obstruction to the possession of the plaintiffs over the suit land. The ground mentioned for condonation of delay was the illness of the daughter in

law Reshma, who, according to the petitioner had developed heart trouble and was being treated in KEM hospital, Mumbai for quite some time. She was also advised to undergo heart surgery. The petitioner has stated that the whole family was disturbed because of the heart ailment of the daughter-in-law and hence he could not file the appeal within time. The medical certificate/papers in support of the illness of the daughter in law were placed on record before the trial court. The application was, however, rejected holding that the ground is vague and that no sufficient cause was shown to condone the delay.

3. The legislature has conferred powers to condone delay by enacting section 5 of the Indian Limitation Act, 1963 in order to enable the courts to do substantial justice to the parties by disposing of matters on merits. The expression "sufficient cause" employed is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Looking to the facts of the present case, the petitioner-defendant did not stand to benefit by lodging the appeal late. It cannot be presumed that the delay was occasioned deliberately and in any case other side could be compensated by cost for condoning the delay. In my opinion, the explanation offered or

the cause shown by the petitioner cannot be said to be imaginary and false. In the circumstances, this petition is allowed. The delay of 80 days in filing the appeal stands condoned subject to payment of cost of Rs.1000/- to be deposited in the appeal court within four weeks from today. On depositing the cost, the plaintiffs shall have a liberty to withdraw the same.

4. At this stage, I am informed that even before filing of the suit respondent no.5, who was plaintiff no.5 in the suit, had died and, therefore, the petitioner in the present petition has not brought his heirs on record. I do not wish to express any opinion on this issue and it is left open for the parties to file appropriate application before the appeal court.

5. With these observations, the writ petition is disposed of. Rule made absolute accordingly.

(D.B.BHOSALE,J.)